IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 695 OF 2004

Sudhir Shripati Dhulugade & anr. ... Appellants

v/s

Abhinandan Tyres & Spares, a firm. ... Respondent

Mr. G.M. Savagare for the appellants.

CORAM: P.V. KAKADE, J.
DATED: 23RD JUNE, 2005

P.C.:

1. This is an appeal preferred by the appellant against the judgment and order passed by the Addl. District Judge, Kolhapur, dated 29.11.2003 allowing the appeal with costs and setting aside the judgment and order passed by the Trial Court, dated 18.12.1996 dismissing the suit and judgment for recovery of the amount.

2. The plaintiff, a registered partnership firm dealing in automobile tyres, has filed the suit against the defendant for the recovery of Rs.4,656/- alongwith interest at the rate of 18% p.a. on the ground that the goods were sold to defendant No.1, however, the price thereof was not paid inspite of notice issued to them

and hence it was sought to be recovered by filing the suit. The defendant challenged the suit on the ground that the goods supplied to him were of low quality and, therefore, he was not bound to make payment and, as such, denied to make the payment and sought dismissal of the suit. The learned Trial Judge came to the conclusion that the plaintiff had failed to prove his claim and it was held that he was not entitled to recover the amount. However, it was held that the defendant had failed to prove that the goods were of low quality. Inspite of this aspect, the suit came to be dismissed.

The appeal was carried to the District Court, Kolhapur. After hearing both parties, the learned District Judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had proved his case and passed the decree in his favour setting aside the judgment and order passed by the lower Court. Hence the present appeal.

3. I have heard the learned counsel for the appellants. Perused the record.

4. The substantial question of law sought to be raised

in this appeal is to the effect that the buyer i.e. when the defendant had no opportunity to examine the goods before they were despatched, whether the implied conditions in Sec. 16(2) of the Sale of Goods Act, as to merchantability or quality of the goods purchased, can be denied to the buyer. However, in my considered view, this cannot be the substantial question of law, especially in the light of evidence available on record which shows that there was implied contract between the parties and the defendant was aware of the quality and quantity of the goods which was supplied to him at the foot of order placed by him with the plaintiff. Under such circumstances, he cannot come with the case that the goods were of low quality and, therefore, he was not liable to pay the amount. In fact, both the Courts below have concurrently held that the defendant has failed to prove that the goods were of low quality. So far as the question regarding the payment is concerned, the lower appellate Court has appreciated the evidence on record in proper perspective while coming to the conclusion that the defendant had not paid any amount and, therefore, was liable to pay the said claim. In other words, there is no substantial question of law involved in this appeal and hence the appeal stands dismissed. Consequently, the Civil Application No. 785

of 2004 also stands dismissed.

(P.V. Kakade, J.)